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Condition (5) (C) Report

COMPLIANCE WITH THE TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE



Prepared by the U.S. Department of State

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UNCLASSIFIED

- 2 -

REPORT ON TREATY COMPLIANCE

This report on compliance (hereinafter referred to as the “Report”) with the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (hereinafter referred to as the “Treaty”) is submitted pursuant to Condition (5)(C) of the Senate Resolution of Advice and Consent to Ratification of the May 31, 1996, Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe of November 19, 1990 (“the CFE Flank Document”) and covers December 1, 2010, through December 31, 2011.

The states parties certified to be in compliance with the Treaty and its associated documents for 2011 are: Belgium, Bulgaria, Canada, the Czech Republic, Denmark, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Kazakhstan, Luxembourg, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Turkey, the United Kingdom, and the United States.

The states parties not certified to be in compliance with the Treaty and its associated documents for 2011 are: Armenia, Azerbaijan, Belarus, Russia, and Ukraine.

A. COMPLIANCE ISSUES AND STEPS TAKEN WITH REGARD TO STATES PARTIES NOT CERTIFIED

This Report lists unresolved compliance issues previously reported in earlier condition (5)(C) reports. Other issues noted in earlier Reports that have not been repeated are no longer considered to be active discrepancies. Reviewed in detail are new compliance issues and new information for 2011 on the unresolved compliance issues.

Armenia

Although Armenian officials have expressed their full support for the Treaty, Armenia has failed to comply with a number of its Treaty obligations. Compliance issues, all previously reported, include: (1) declared reduction liabilities that are not in accord with Treaty requirements, with consequent failure to complete necessary reductions; (2) reported stationing of forces on the territory of Azerbaijan without Azerbaijani consent; (3) apparent failure to declare all MT-LBu variant armored personnel carrier (APC) look-alikes; and (4) possible unreported holdings of conventional armaments and equipment subject to the Treaty. It is unclear whether progress can be made on the first three issues outside the context of a political settlement of the Nagorno-Karabakh (N-K) conflict, which is the focus of the

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Organization for Security and Co-operation in Europe (OSCE) Minsk Group's mediation efforts. In addition, see the section on collective obligations for a discussion of the collective shortfall issue.

New Compliance Issue in 2011

Possible failure to report BTR-80 armored vehicles as APCs or APC look-alikes. Publicly available film of a rehearsal and military parade held in Yerevan in September 2011 shows six BTR-80 armored vehicles on display—several more than the number of BTR-80 APCs that Armenia declared in its data as of both January 1, 2011, and January 1, 2012. If all six BTR-80s displayed at the September 2011 parade are APCs or APC look-alikes assigned to the conventional armed forces, they should be reported under the Treaty.

Steps the United States Has Taken and Armenian Response in 2011

In 2011, the United States conducted one inspection of Armenian forces. NATO Allies conducted four inspections, of which none included a U.S. inspector.

The United States and NATO Allies have continued to raise compliance issues in the Treaty's Joint Consultative Group (JCG) as well as in bilateral discussions. The N-K conflict appears to be a major influence affecting most of Armenia's compliance issues, as well as an important factor in the issue of uncontrolled and unaccounted for equipment limited by the Treaty. See the OSCE Minsk Group Activity section for further discussion of the N-K conflict.

Azerbaijan

Although Azerbaijan has expressed its full support for the Treaty, Azerbaijan has not fulfilled some of its obligations and has stated that security issues continue to affect Azerbaijan's implementation. Azerbaijan continues to maintain that it cannot carry out some Treaty obligations so long as the N-K conflict is unresolved and part of Azerbaijan's territory is under foreign occupation. Compliance issues, all previously reported, include: (1) exceeding its Treaty-limited equipment (TLE) limits from when they went into effect in November 1995 through January 1, 2000, and from January 1, 2007, to the present; (2) unilateral suspension of certain Treaty notifications and failure to report correctly certain objects of verification, and (3) failure to notify and complete a reduction obligation. In addition, see the section on collective obligations for a discussion of the collective shortfall issue.

Compliance Issue With New Information in 2011

Compliance with Limits. Previously declared equipment totals that exceeded Azerbaijan's overall limits of TLE—a contravention of fundamental Treaty limits—continued through 2011. In its data as of January 1, 2012, Azerbaijan declared equipment totals that exceeded its overall limits by over 390 pieces of TLE (over 160 tanks and about 230 artillery pieces in excess of Azerbaijan's limits).

Steps the United States Has Taken and Azerbaijani Response in 2011

In 2011, the United States conducted zero inspections in Azerbaijan. NATO Allies conducted five inspections, of which two included a U.S. inspector.

The United States and NATO Allies have continued to raise compliance issues in the JCG as well as in bilateral discussions. Azerbaijan has continued to insist that security concerns limit its ability to implement Treaty provisions, until the N-K conflict is resolved. Azerbaijan has not taken any action to eliminate or decrease its equipment overages during the period covered by this Report, and the overages have increased. See the OSCE Minsk Group Activity section for further discussion of the N-K conflict.

OSCE Minsk Group Activity

The OSCE Minsk Group is the only format agreed upon by Armenia and Azerbaijan to negotiate a peaceful resolution of the N-K conflict. On May 26, 2011, the presidents of the OSCE Minsk Group's co-chair countries—France, Russia, and the United States—urged the presidents of Armenia and Azerbaijan to finalize the Basic Principles as a framework for a comprehensive peace settlement. At the OSCE Ministerial Council Meeting in Vilnius, Lithuania, on December 6, 2011, the heads of delegation of Russia, the United States, France, Azerbaijan, and Armenia reaffirmed the importance of reaching a peaceful settlement of the N-K conflict. They agreed further efforts should be made to work on the details of the mechanism to investigate ceasefire violations, which resulted from the joint statement of the presidents of Armenia, Azerbaijan, and Russia at the March 2011 summit. The ministers of Azerbaijan and Armenia also expressed appreciation for the efforts of the co-chair countries and said that the presidents of Azerbaijan and Armenia are ready to meet under the auspices of the co-chair countries to continue their direct dialogue.

Belarus

Although Belarus has stated its full support for the Treaty, there continue to be longstanding concerns about Belarus' fulfillment of some Treaty obligations. Recurrent problems with site access and site diagrams have previously been reported as compliance issues. In addition, see the section on collective obligations for a discussion of the collective shortfall issue.

Steps the United States Has Taken and Belarusian Response in 2011

In 2011, the United States conducted zero inspections of Belarusian forces.¹ NATO Allies conducted five quota inspections, of which three included a U.S. inspector, and five above-quota, paid inspections, of which one included a U.S. inspector. The United States and NATO Allies have continued to raise compliance issues in the JCG as well as in bilateral discussions.

Russia

Since its “suspension”² of implementation of the Treaty at the end of 2007, Russia has made clear that it will not return to the original Treaty. Russia did state in 2007 that it did not anticipate increases of its forces in the area of application (AoA) above 2007 levels. Since December 12, 2007, Russia has failed to comply with its reporting obligations under the Treaty and related commitments and has declined all inspections of Russian forces or on Russian territory. The United States and all NATO Allies have made clear that Russia's “suspension” was a unilateral measure not provided for under the terms of the Treaty.

Russia's decision in August 2008 to introduce additional military forces into Georgia without host state consent and subsequent recognition of Abkhazia and South Ossetia as independent states were inconsistent with the obligation of the states parties recalled in the Treaty's preamble, “to refrain in their mutual relations, ... from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations.”

Compliance issues, all previously reported, are: (1) Russian “suspension” of its implementation of the Treaty; (2) stationing forces without the consent of the host state; (3) exceeding flank limits; (4) improper designation of armored combat

1 (U) Belarus allows other states parties to conduct additional inspections, using Treaty procedures, above the quota it is required to accept, as long as the inspecting country pays the entire cost of inspection.

2 (U) The remaining text in this Report refers to Russia's action as a suspension of implementation of the Treaty, as a decision to suspend observation of Russia's Treaty obligations, or as a “suspension” in quotation marks, since the Russian action is not viewed as justified under the circumstances based on customary international law or by the terms of the Treaty.

vehicles as ambulances; (5) failure to declare look-alikes that are accountable under the Treaty's Protocol on Existing Types of Conventional Armaments and Equipment; (6) exceeding overall limits for holdings in active units; and (7) improperly reporting some armored infantry fighting vehicles (AIFVs) as AIFV look-alikes and subsequently failing to report them at all. In addition, these compliance issues were related to inspections prior to the Russian "suspension" and they will no longer be reported on in future reports: (8) denial of full access during inspections prior to 2001 and improper site diagrams; (9) refusal in 2006 to allow a U.S. inspection to proceed as a supplementary rather than as a quota inspection; and (10) denial in 2007 of a UK supplementary inspection on improper grounds. In light of the Russian "suspension," it is not possible to determine whether any of the issues noted here have been resolved. See the section on collective obligations for a discussion of the collective shortfall issue.

Compliance Issues With New Information in 2011

Russian "Suspension" of Its Implementation of the Treaty. Since December 12, 2007, and continuing through 2011, Russia rejected all inspections and failed to provide Treaty-required annual data³ and all other Treaty-required information.

Stationing Forces without Consent of the Host State. The presence of Russian forces in Georgia and Moldova without host state consent are continuing violations of Article IV, paragraph 5, of the Treaty.⁴ Press reports indicate that, in Georgia, Russia since 2008 has continued to replace temporary accommodations for its forces in the separatist territories with more permanent facilities.

Exceeding Flank Limits. According to Russia's annual data as of January 1, 2007, its flank data as of July 1, 2007, and Russian notifications up to December 12, 2007, Russia continued to exceed most of the current legally binding limits for flank zones, but was within the future limits for the flank zone under the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe (referred to as the "Adapted Treaty").^{5 6} The limited and incomplete information available does not

3 (U) Information required but not provided from December 2007 through December 2011 includes Russia's annual Treaty data as of January 1, 2008, 2009, 2010, 2011 and 2012, and associated annual notifications; flank data as of July 1 each year; quarterly notifications regarding equipment holdings at the Kushchevskaya armor maintenance facility; and periodic notifications of permanent changes in the organizational structure of Russia's conventional armed forces, or of changes of 10 percent or more in TLE assigned to units.

4 (U) While the Treaty establishes numerical limits on TLE and not on military personnel, the Article IV, paragraph 5 prohibition on stationing without host state consent applies to conventional armed forces in general.

5 (U) The Adapted Treaty is not yet in force and its provisions do not apply to the states parties.

indicate that there were any Russian overages above Adapted Treaty flank limits on Russian territory.

Steps the United States Has Taken and Russian Response in 2011

In 2011, the United States issued 11 and NATO Allies issued 16 notifications of intent to inspect Russian forces in the Russian Federation or stationed elsewhere in the AoA. In each case, Russia responded with a notification “denying” the inspection on the basis of Russia’s “suspension” of implementation of the Treaty.⁷ All Russian refusals of inspections by NATO Allies were regularly raised in the JCG in statements objecting to the refusal and calling on Russia to reverse its decision to “suspend” its implementation of the Treaty. Since Russia “suspended” its implementation of the Treaty through December 31, 2011, Russia has rejected 119 inspection notifications by the United States and NATO Allies.

The United States and NATO Allies have responded to Russia’s decision to “suspend” implementation of the Treaty with diplomatic engagement at the most senior levels. While U.S.-Russia discussions were professional and comprehensive, Russian authorities remained inflexible on key issues.

In June 2010, NATO Allies, led by the United States, presented Russia and the other seven Treaty states parties with a proposal to develop a framework agreement that would serve as the basis for negotiations to strengthen and modernize the conventional arms control regime in Europe. The proposal included all current Treaty states parties and all NATO Allies (including the six NATO Allies not party to the Treaty) in any new negotiation and called for all states parties to implement agreed Treaty obligations for the duration of the negotiation.

The November 2010 NATO Lisbon Summit Declaration encouraged the 36 participating nations⁸ to redouble efforts to conclude a principles-based framework to guide negotiations in 2011.

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- Reference is made in parts of this Report to Adapted Treaty flank numerical limits due to political commitments that Russian forces adhere to those future, but not yet legally applicable, limits.
- 6 (U) Russia’s data as of January 1, 2011, provided under the OSCE Global Exchange of Military Information, indicated the presence of a considerable amount of TLE in Abkhazia and South Ossetia, almost certainly originating from two units base in Russia’s Adapted Treaty flank zone. If this information is accurate, then most holdings of TLE of these two units would no longer be located in Russia’s Adapted Treaty flank zone. Thus, it is likely that Russia’s holdings in the Adapted Treaty flank zone are below its Adapted Treaty limits.
- 7 (U) Under the Treaty’s Protocol on Inspection, no State Party has the right to refuse a declared site inspection (unless it would result in too many inspections on the territory of one State Party at the same time), and declared site inspections can only be delayed in cases of *force majeure*.
- 8 (U) The 30 NATO States Parties to the Treaty, plus 6 NATO nations not States Parties to the Treaty.

UNCLASSIFIED

- 8 -

Russian President Medvedev stated on December 1, 2010, at the OSCE summit in Astana that, “We hope too to finally break the deadlock on the issue of the conventional arms control regime. This is not just our hope but is something we will work on actively, helping to find solutions to these issues.”

Between June 2010 and May 2011, a number of meetings were held—U.S. and Russia bilateral meetings as well as “at 36” meetings—to discuss a possible framework agreement and follow-on negotiations to modernize the Treaty. In May 2011, with Russia showing no flexibility on key issues and with no prospects of agreement on a framework proposal after 10 rounds of “at 36” meetings, the United States and its Allies decided to shelve the framework, but left the door open for additional arms control discussions should Russia signal its readiness to constructively address the key issues.

Following extensive consultations with NATO Allies and other states parties, the United States announced in Vienna, Austria, on November 22, 2011, that it was ceasing implementation of certain obligations under the Treaty with regard to Russia. The United States noted that this action came after the United States and NATO Allies had tried over the past four years to find a diplomatic solution following Russia’s improper 2007 decision to cease implementation of all Treaty obligations with respect to all 29 other states parties to the Treaty. The United States will continue to implement all of its obligations under the Treaty with respect to all states parties other than Russia, and is prepared to resume full Treaty implementation regarding Russia if Russia resumes implementation of its Treaty obligations. The other 21 NATO states parties to the Treaty and Georgia announced their decisions to cease implementation of the Treaty “vis-à-vis the Russian Federation” at the November 22 and 29, 2011, meetings of the JCG. Moldova made a similar announcement at the JCG on December 13, 2011.

The Annual Exchange of Military Information for the Treaty with data effective as of January 1, 2012, was held in Vienna, Austria, on December 15, 2011. Twenty-eight states parties provided data (Iceland had no Treaty data to declare, and Russia did not provide Treaty data). Russia did not volunteer a summary of its TLE in the AoA as it had done annually since December 2007.

The continuing presence of Russian forces in Georgia and Russian recognition of the independence of Abkhazia and South Ossetia, suggest that this issue will not be resolved in the near future.

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The United States and NATO Allies have raised longstanding compliance issues bilaterally and in a variety of multilateral fora, including: the JCG (including in detail at the CFE Review Conferences in 2001, 2006, and September 2011); OSCE, NATO, and NATO-Russia ministerial meetings; and in the NATO-Russia Council and committees. Russian responses to questions on compliance have varied, but they generally have tried to deflect U.S. concerns. From 2007 through 2011, other longstanding issues were not pursued, as discussions focused on those related to Russia's "suspension."

Ukraine

Ukraine has stated its full support for the Treaty and has substantially complied with the Treaty. Compliance issues, all previously reported, include: (1) exceeding some of its limits on holdings of equipment in active units; and (2) an unfulfilled obligation for naval infantry/coastal defense (NI/CD)-related reductions. These compliance issues affect the collective obligations of the eight USSR successor states. In addition, see the section on collective obligations for a discussion of the collective shortfall issue.

Steps the United States Has Taken and Ukrainian Response in 2011

In 2011, the United States conducted one quota inspection, two supplementary inspections, and three above-quota, paid inspections of Ukrainian forces.⁹ NATO Allies conducted 10 quota inspections in Ukraine, of which four included a U.S. inspector. NATO Allies also conducted four above-quota, paid inspections in Ukraine, of which two included a U.S. inspector. NATO Allies also conducted an additional six inspections of Ukrainian forces under bilateral agreements but using Treaty procedures, of which two included U.S. inspectors. The United States and NATO Allies have continued to raise compliance issues in the JCG as well as in bilateral discussions.

Collective Obligations

The eight USSR successor states that became Treaty states parties assumed a collective obligation, agreed to in the 1992 Tashkent Agreement and reaffirmed at the Extraordinary Conference in Oslo in 1992, that has not yet been fulfilled. The obligation was to declare reduction liabilities and to complete reductions that would, in the aggregate, be no less than what the USSR would have had to declare and to

⁹ (U) Ukraine allows other states parties to conduct additional inspections, using Treaty procedures, above the quota it is required to accept, as long as the inspecting country pays the entire cost of inspection.

complete. In addition, Russia and Ukraine have a shared NI/CD reduction. This shared obligation remains unfulfilled on the part of Ukraine. See earlier condition (5)(C) reports for discussion of these obligations.

B. MILITARY SIGNIFICANCE AND BROADER SECURITY RISKS OF COMPLIANCE CONCERNS

None of the compliance concerns identified and discussed in this Report are militarily significant to the United States or to NATO as a whole. , Russia's "suspension" of implementation, however, has seriously eroded the Treaty's verification regime and undermined the cooperative approach to security that has been a core element of the NATO-Russia relationship and European security for more than two decades. The action taken by the United States and 23 other states parties in late 2011 to cease implementing certain obligations under the Treaty with regard to Russia only, as a necessary response to the 2007 unilateral Russian "suspension" of its Treaty obligations, is fully reversible if Russia resumes implementation of the Treaty.

The questions of Armenian unreported equipment holdings and Azerbaijani overages may be militarily significant to those two states, especially in the context of the N-K conflict. Also of note, any Russian forces stationed without the consent of the host State Party have political and military significance to the state in which those forces are stationed. While not a direct military threat to the United States or NATO, the Russian military presence in Georgia and Russia's recognition of the independence of Abkhazia and South Ossetia undermine conventional arms control treaties and agreements and erode the security situation generally within the AoA.

Notwithstanding military significance, it is the policy of the United States that all violations of arms control agreements should be challenged and corrected, lest governments subject to such obligations conclude that they may be disregarded at will.